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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

TERESA MEANS-FERGUSON, Plaintiff and Respondent, v. SACRAMENTO METROPOLITAN FIRE DISTRICT, Defendant and Appellant.	C060269 (Super. Ct. No. 2008-00011416-CU-WM-GDS)
IRENE YSLAS, Plaintiff and Respondent, v. SACRAMENTO METROPOLITAN FIRE DISTRICT, Defendant and Appellant.	C060402 (Super. Ct. No. 07AS02789)

In these consolidated cases, two former employees of the Sacramento Metropolitan Fire District (hereafter, the District) -- Teresa Means-Ferguson and Irene Yslas (jointly, plaintiffs) -- obtained writs of mandate for reinstatement

and back pay because the District had fired them without providing the procedural safeguards guaranteed to public employees whose employment can be terminated only for cause. (See generally *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 (*Skelly*).) In each case, the trial court rejected the District's arguments that the employment was at will and that the writ petition was barred by laches.

On appeal, the District contends that under the resolution of its board of directors that governed plaintiffs' employment, they both "were subject to termination without cause," and the trial court erred in concluding otherwise. In the alternative, the District contends the plaintiffs' writ petitions were barred by laches because they "waited almost two years after their termination to file and prosecute their petitions for writ of mandate."

Finding no merit in the District's arguments, we will affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

Means-Ferguson's Employment With The District

Means-Ferguson was hired by the Sacramento County Fire Protection District in July 1994 as a human resources analyst-generalist.[1] Her written employment agreement provided that

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[1] At the time, and at least through the termination of her employment effective November 1, 2006, Means-Ferguson's surname was simply Means. We will, however, refer to her throughout our opinion by the surname she used when she filed her writ petition in this proceeding -- Means-Ferguson.

she was "to be considered a regular employee of the District and may not be terminated without cause."

In June 1996, Means-Ferguson was promoted to human resources manager under another written employment agreement that likewise provided she could not be terminated without cause. The agreement did provide, however, that if the board of directors no longer wanted Means-Ferguson to serve as human resources manager, she would be returned to her position as human resources generalist. This agreement was for only a one-year term and was a resolution of that district's board of directors (Resolution No. 1996-14) as well as an employment agreement.

From June 1998 through May 1999, Means-Ferguson was again employed as human resources manager pursuant to a board resolution/employment agreement.[2]

In March 2000, the Sacramento County Board of Supervisors reorganized the Sacramento County Fire Protection District and the American River Fire Protection District into a single new entity, the Sacramento Metropolitan Fire District. At that time, Means-Ferguson continued in her employment as the District's human resources manager, which was considered part of the District's senior management staff. The resolution ordering

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[2] The record does not contain a board resolution/employment agreement covering Means-Ferguson's employment from June 1997 through May 1998, but it appears undisputed Means-Ferguson remained employed as that district's human resources manager during that period.

the reorganization provided that the "terms and conditions of employment" for senior management would "be governed by the terms of existing Resolutions until replaced by a new Resolution covering all employees of the successor District in this category."

In November 2000, the District adopted "A Resolution Affecting Senior Management, Management and Unrepresented Confidential Employees" (Resolution No. 44-00), which apparently set the terms and conditions of the employment of senior management staff such as Means-Ferguson. That resolution was superseded by another adopted in March 2004 (Resolution No. 20-04) -- the one at issue in this case. Resolution No. 20-04 applied to Means-Ferguson in her employment as Deputy Chief of Human Resources.[3] As relevant here, the resolution contained the following provision:

"**14. AT-WILL EMPLOYMENT**

"All members of Senior Management, Management, and Unrepresented Confidential Employees serve at the pleasure of the Fire Chief. Appointments are made by the Fire Chief. Release from appointment shall be affected only by the Fire Chief, with an appeal right to the Board of Directors. Any Employee released, without cause, shall be permitted to 'bump back' to a lower classification, for which (s)he is qualified,

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[3] At some time not indicated in the record, Means-Ferguson's title became deputy chief of human resources, the position she held at the time of her termination.

as assigned by the Fire Chief. A 'bump back' employee shall receive a maximum ten percent (10%) reduction in salary and shall have that salary 'Y-Rated.' During such time as a 'bump back' employee's salary remains above the top step for an assigned classification, that employee shall not receive further salary increases."

In April 2006, the fire chief placed Means-Ferguson on paid administrative leave "pending the outcome of [an] investigation surrounding claims of improper conduct." On October 31, 2006, the fire chief terminated Means-Ferguson's employment with the District effective the following day. Through an attorney, Means-Ferguson immediately asserted she was entitled to a *Skelly* hearing before the termination of her employment. The District's attorney responded promptly, asserting that under section 14 of Resolution No. 20-04, Means-Ferguson was an at-will employee whose employment could be terminated without such a hearing. As the trial court noted, "It is undisputed that the District did not afford [Means-Ferguson] any of the pre-removal safeguards required by *Skelly* and that -- despite acknowledging [her] right of appeal -- the District failed to respond to [her] request for an appeal or provide her with any evidentiary hearing during the termination process."

Yslas's Employment With The District

Yslas was hired by the Sacramento County Fire Protection District in August 1988. Between 1997 and 2000, Yslas was employed under a resolution that provided for disciplinary action, including discharge, only for cause. She remained

employed by the Sacramento Metropolitan Fire District after the reorganization in 2000. In 2006, Yslas was employed with the District as a human resources technician. In that position, Yslas was considered an unrepresented confidential employee and as such was governed by Resolution No. 20-04. Her supervisor was Means-Ferguson; indeed, Means-Ferguson refers to Yslas has her "secretary."

On November 2, 2006, two days after the termination of Means-Ferguson's employment, and only hours after Yslas was compelled to submit to an interview by an investigator for the District, the fire chief notified Yslas that the District was terminating her employment for cause -- namely, insubordination and dishonesty -- effective immediately. As the trial court noted, "It is . . . undisputed that the District did not afford [Yslas] any of the pre-removal safeguards required by *Skelly* or respond to her request for an evidentiary hearing to contest her termination."

Means-Ferguson's Litigation

Means-Ferguson first filed suit against the District in federal court arising out of the termination of her employment. In August 2007, Means-Ferguson filed an action against the District (and others) in state court. A series of demurrers followed. As relevant here, the first cause of action in Means-Ferguson's second amended complaint, which was for wrongful termination, included a "count" for "'[t]ermination in violation of the fundamental principle of right to due process.'"

On May 19, 2008, the District demurred to this "count" (as well as to other parts of the complaint). The next day, on May 20, Means-Ferguson commenced the current proceeding by filing a petition for writ of mandamus to compel the reinstatement of her employment and an award of back pay and benefits. Later, in response to the District's demurrer to the second amended complaint in her other action, Means-Ferguson chose to "withdraw" the "count" for termination in violation of due process because she was pursuing this writ proceeding instead.

In her writ petition, Means-Ferguson asserted that under Resolution No. 20-04 her employment could not be terminated without cause, and therefore she was entitled to a *Skelly* hearing and other procedural safeguards. She argued that under Resolution No. 20-04, "the Fire Chief has the power to bump an employee back to a lower classification, without cause, at his own pleasure," but "an employee can only be terminated with sufficient cause." She sought reinstatement to her position as deputy chief of human resources back to October 31, 2006, and an award of back pay and benefits.

In opposition to Means-Ferguson's writ petition, the District asserted (among other things) that she "was merely an at-will employee whose employment was properly terminated." The District also asserted that Means-Ferguson was "guilty of laches" because there was a "delay of over twenty months" between the termination of her employment and the filing of her writ petition seeking reinstatement.

In August 2008, the trial court issued its tentative ruling, agreeing with Means-Ferguson that "the District violated her due process rights by terminating her employment without affording her any of the constitutionally required procedural safeguards." The court concluded that "[b]y virtue of the language in Resolution No. 20-04, the historical customs and practices of the District, [Means-Ferguson's] longevity of service, and the District's conduct toward[] [her] during the termination process, there arose a mutual understanding between the parties that [she] had a vested right to continued employment that could be terminated only for cause." The court did not expressly address the District's laches defense, but implicitly rejected it. Accordingly, the court ordered the issuance of a writ of mandate compelling the District to "restore [Means-Ferguson] to her former employment pending the outcome of [an] evidentiary hearing" and awarding her back pay and benefits.

Thereafter, the trial court affirmed its tentative ruling and entered judgment in favor of Means-Ferguson in October 2008.

Yslas's Litigation

Although Yslas's writ petition is not included in the record on appeal, it appears from the trial court case number (07AS02789) that Yslas commenced her legal action against the District sometime in 2007, seeking "various legal and equitable remedies, including reinstatement and back[ ]pay." After a series of demurrers, the District's demurrer to Yslas's "cause of action for Issuance of a Writ of Mandate" was overruled in

April 2008. In July 2008, after the District filed its answer, Yslas gave notice of a hearing on her petition for a writ of mandate to be held in September. In support of her petition, she, like Means-Ferguson, argued that under Resolution No. 20-04, her employment was "subject to termination only for cause." She, too, sought reinstatement and an award of back pay and benefits.

In opposition to Yslas's writ petition, the District argued she "was an at-will employee who did not have a guarantee of continued employment and whose employment could be terminated at any time for any legal reason with or without cause." The District also argued her petition was barred by laches because her "employment was lawfully terminated on November 2, 2006, but she did not file/serve her writ for petition [*sic*] of mandate until July 23, 2008, which amounts [to] a delay of over 20 months." (Bold text and italics deleted.) In support of its laches defense, the District offered a declaration from the fire chief, in which he asserted the District had "hired a full-time replacement for Ms. Yslas and there are currently no equivalent positions in the Human Resources [D]epartment, or any similar department."

In September 2008, the trial court issued its ruling, concluding that Resolution No. 20-04 gave Yslas "a vested property interest in continuous employment, consistent with the past customs and practices of the District." In the court's view, "The only reasonable interpretation of . . . section [14 of Resolution No. 20-04] is that the Fire Chief has the power to

bump employees back to a lower classification, without cause, at his pleasure, but that employees can only be terminated from employment for cause." The court rejected the District's laches defense without explanation. Accordingly, the court ordered the issuance of a writ of mandate like the one it ordered in Means-Ferguson's case and entered judgment in favor of Yslas in October 2008, the same day it entered judgment in favor of Means-Ferguson.

The Appeals

The District timely appealed from both judgments. We later consolidated them.

DISCUSSION

The Nature Of Means-Ferguson's And Yslas's Employment

The District contends plaintiffs were not entitled to any *Skelly* rights because Resolution No. 20-04 governed their employment and "unambiguously states that [they] were at-will employees subject to termination without cause." Accepting the premise that Resolution No. 20-04 alone governed plaintiffs' employment -- regardless of any resolutions or agreements that existed before[4] -- we nonetheless disagree with the District that

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[4] In its decision in Yslas's case, the trial court questioned whether she "could be deprived of th[e] right" to "continuous employment subject to discipline only 'for cause'" that she enjoyed before the adoption of Resolution No. 20-04 "by legislative fiat" in the adoption of that resolution. Means-Ferguson and Yslas take up that argument in their respondents' brief. For our purposes, however, we need not question the District's assertion that Resolution No. 20-04 governed plaintiffs' employment irrespective of any earlier resolutions

plaintiffs' employment could be terminated without cause under section 14 of Resolution No. 20-04.

"In California, the terms and conditions of public employment are determined by law, not contract." (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1690.) Here, the governing "law" was Resolution No. 20-04, the interpretation of which (the District admits) presents a question of law subject to de novo review on appeal.

In arguing that section 14 of Resolution No. 20-04 created an at-will employment relationship with plaintiffs, the District relies on (1) the title of the section ("At-Will Employment") and (2) the provision in the first sentence of the section that the employees governed by the resolution "serve at the pleasure of the Fire Chief." (Italics omitted.) As the District points out, "A public employee serving at the pleasure of the appointing authority . . . is by the terms of his employment subject to removal without judicially cognizable good cause." (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771, 783.)

In construing laws, however, we do not view provisions in isolation, but instead construe the enactment as a whole, seeking to give "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.)

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or understandings. Assuming that to be true, the District's argument that their employment was at will under the terms of the resolution still fails.

Thus, we must give meaning not only to the title of section 14, and the provision that the employees governed by Resolution No. 20-04 "serve at the pleasure of the Fire Chief," but also to the later "bump back" provision, which specifies that "[a]ny Employee, released *without cause*, shall be permitted to 'bump back' to a lower classification." (Italics added.) If an employee released without cause has a *right* to be placed in another, lower position with the District, then how can the District have the right to terminate such a person's employment with the District altogether without cause?

The District argues that "the bump-back provision only applies *after* an employee is terminated 'without cause,'" and "[j]ust because an employee may request to be bumped[]back . . . does not mean that the Fire District cannot terminate that employee without cause." But if an employee has a *right* to remain employed with the District, albeit in a lower position, section 14 cannot reasonably be construed as allowing the *termination of employment with the District* without cause, or else that right is empty.

To make sense of all parts of section 14, we believe the "at will" and "without cause" provisions contained in the section must be understood to refer to service in the positions governed by Resolution No. 20-04, and not to employment with the District generally. Construed in this manner, section 14 provides that while a person appointed to a management, senior management, or unrepresented confidential staff position with the District serves in *that position* at the pleasure of the fire

chief, and thus may be removed from *that position* without cause, such a person has a right to continued employment with the District in a lower position. By necessary implication, *that* right cannot be taken away except *with* cause. In effect, section 14 allows the fire chief to *demote* a person in a management, senior management, or unrepresented confidential staff position without cause, but implicitly requires *cause* to terminate such a person's employment altogether. Thus, we agree with the trial court's conclusion in Yslas's case that "[t]he only reasonable interpretation of . . . section [14 of the resolution] is that the Fire Chief has the power to bump employees back to a lower classification, without cause, at his pleasure, but that employees can only be terminated from employment for cause."

The District argues that in relying on the bump-back part of section 14, "the trial court ignored the well-established rule of interpretation requiring courts to avoid a construction of a statute or regulation that makes some words mere surplusage." Apparently the District believes that the trial court's interpretation of section 14 -- and now ours -- ignores the title of the section, "At-Will Employment." Not so. Our interpretation of section 14 gives meaning to those words by recognizing that employment in any particular management, senior management, or unrepresented confidential staff position is at will because the fire chief may demote an employee from such a position without cause. This does not mean, however, that *employment with the District*

generally is at will. By granting the employees governed by Resolution No. 20-04 the right to bump back to a lower position if released from a higher position without cause, the District negated any reasonable interpretation of section 14 as providing for at-will employment with the District. All that is at will is an appointment to a management, senior management, or unrepresented confidential staff position.

In fact, without intending to do so, the District actually supports our interpretation of section 14 when it argues that the bump-back provision "only applies to employees terminated without cause" and "[s]ince both [plaintiffs] were terminated for cause, they have no right to 'bump back.'" By the District's own admission, an employee released from a management, senior management, or unrepresented confidential staff position without cause has the right to remain employed with the District in a lower position, but a person released from such a position *with* cause has no such right. Thus, the District implicitly admits that a person appointed to a management, senior management, or unrepresented confidential staff position with the District has a right to continued employment with the District in some position unless the District has cause to terminate that employment. Under such circumstances, the employment with the District generally (as opposed to the appointment to the higher position) is not at will.

To the extent the District relies on *Hill v. City of Long Beach*, *supra*, 33 Cal.App.4th 1684 to support its argument that

plaintiffs' employment with the District could be terminated without cause, that reliance is misplaced. In *Hill*, the court did not hold -- as the District contends -- that despite a "right to rever[t]" to a previously held classified position, a person employed in the unclassified position of managing director "could be terminated without cause because the City's rules stated that he served at the pleasure of the City." On the contrary, the court's conclusion in *Hill* was comparable to our conclusion here. Specifically, *Hill* concluded that the plaintiff "held his position [as managing director] at the City's pleasure and could be removed [from that position] without good cause, but, if removed, had the right to revert to environmental specialist, his last classified position" (*Hill, supra,* 33 Cal.App.4th at p. 1693), which is exactly what happened in that case (see *id.* at pp. 1688-1689). Similarly, here Means-Ferguson held her position as deputy chief of human resources and Yslas held her position as human resources technician at the fire chief's pleasure, and could be removed from those positions without cause, but if that happened they had the right to bump back in to lower positions. To terminate their employment with the District altogether, however, the District had to have cause.

Our interpretation of section 14 also gives meaning to the appeal provision contained in the section. If a person appointed to a management, senior management, or unrepresented confidential staff position can be demoted without cause, then the appointee has no property interest in any such

position, and the District does not have to afford procedural due process safeguards to the appointee before demoting him or her. (See *Skelly*, *supra*, 15 Cal.3d at p. 208 ["minimum procedural safeguards" are "mandated by the state and federal Constitutions" when a public employee cannot be dismissed without cause].) Section 14 provides, however, that when the fire chief releases a person from a management, senior management, or unrepresented confidential staff position without cause, that person has a right to appeal to the board of directors. Thus, section 14 grants a limited right of review to persons demoted from a management, senior management, or unrepresented confidential staff position without cause. On the other hand, if a person's employment with the District is terminated altogether, then the person is entitled to the full panoply of procedural due process rights guaranteed under *Skelly*, because such termination can only be accomplished for cause.

In summary, we reject the District's argument that plaintiffs' employment with the District was at will and could be terminated without cause.

II

Laches

The District contends plaintiffs' petitions for writs of mandate seeking reinstatement and back pay were barred by the doctrine of laches because they waited over 20 months to file their petitions. We disagree.

"'The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.'" (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 68.) "Generally, a trial court's laches ruling will be sustained on appeal if there is substantial evidence to support the ruling." (*Id.* at p. 67.)

At the outset, we must note that the District's laches argument appears to be based on a misapprehension of the facts in both cases. The District asserts Yslas did not file her writ petition until July 2008, "over 20 months after [the] termination" of her employment. But what the District cites as Yslas's petition is actually her *notice of hearing* on the petition. From the case number alone, we have determined that Yslas's legal action against the District was filed in 2007. As for Means-Ferguson, it does appear she did not file her writ petition until May 2008, but it also appears she had been pursuing writ relief against the District before that date in her other legal action, which she filed in August 2007. Thus, both plaintiffs began seeking writ relief much sooner than 20 months after the termination of their employment.

As for the delay that occurred before they first filed their legal actions against the District, there was evidence before the court in Yslas's case at least that it was not until April 2007 that the District adopted a policy giving substance to the right of appeal provided in section 14 of Resolution No. 20-04. Furthermore, there was evidence it was not until

June 2007 that the District communicated to Yslas the existence of this policy. The uncertainty about what administrative appeal was available undoubtedly bears on the reasonableness of the delay in commencing court action, where the failure to exhaust administrative remedies is always a pertinent consideration.

As for whatever delay occurred after plaintiffs filed their legal actions but before they brought their writ petitions to hearing, the evidence in the record indicates it was not until the spring of 2008 that plaintiffs' requests for writ relief were at issue following numerous demurrers filed by the District. Citing *Johnson v. City of Loma Linda*, *supra*, 24 Cal.4th 61, the District contends the demurrers "do not excuse the delay in seeking a writ of mandate because they d[id] not prevent [plaintiffs] from pursuing" their writ petitions. In *Johnson*, however, "the demurrers did not challenge plaintiff's petition for writ of administrative mandate." (24 Cal.4th at p. 69.) Here, on the other hand, it appears the District's demurrers *did* challenge plaintiffs' requests for writ relief. Plaintiffs cannot be faulted for failure to bring to hearing requests for writ relief to which the District was demurring.

From the foregoing, we conclude there was substantial evidence for the trial court to conclude plaintiffs were not guilty of unreasonable delay in filing and prosecuting their writ petitions. Certainly the District has not shown to the

contrary. In the absence of unreasonable delay, laches is not a bar to plaintiffs' writ petitions.

DISPOSITION

The judgments are affirmed. Plaintiffs Teresa Means-Ferguson and Irene Yslas are awarded their costs on appeal. (Cal. rules of Court, rule 8.278(a)(1).)

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

RAYE, J.